IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA
MARTINSBURG DIVISION

CONNIE OUTEN, **Plaintiff,** **v.** **DOLGENCORP, INC.,** **Defendant.**	**No. 3:09-CV-00020-JPB**
TAWANA PROCTOR, **Plaintiff,** **v.** **DOLGENCORP, INC.,** **Defendant.**	**No. 3:09-CV-00021-JPB**
FABRA STEWART, **Plaintiff,** **v.** **DOLGENCORP, INC.,** **Defendant.**	**No. 3:09-CV-00023-JPB**
KIMBERLY WELLER **Plaintiff,** **v.** **DOLGENCORP, INC.,** **Defendant.**	**No. 3:09-CV-00022-JPB**

JOINT FOR MOTION ORDER APPROVING INDIVIDUAL SETTLEMENTS

Plaintiffs Connie Outen, Tawana Proctor, Fabra Stewart-Jones, and Kimberly Weller ("Plaintiffs") and Defendant Dolgencorp, Inc. ("Defendant" or "Dollar General") (collectively referred to herein as "Parties") file this Joint Motion for Order Approving Individual Settlements, and would show the Court as follows:

I.
INTRODUCTION

In these Fair Labor Standards Act ("FLSA") actions, the Plaintiffs and Defendant jointly request that the Court enter a stipulated order approving the individual settlements reached between the Parties in resolution of a *bona fide* dispute regarding Plaintiffs' entitlement to damages under the FLSA. The Parties have carefully and exhaustively negotiated individual settlements in theses actions. They have agreed to resolve the disputed factual and legal issues on terms set forth in the individual settlement agreements, which are described below (the "Agreements").

The Parties now seek approval of the individual settlements. Although the Fourth Circuit has not set forth specific guidelines for approval of an FLSA settlement, the Eleventh Circuit has, as explained in *Lynn's Food Stores, Inc. v. United States*, 679 F.2d 1350 (11th Cir. 1982). In the "context of suits brought directly by employees against their employer under section 216(b) to recover back wages for FLSA violations," the Parties must present any proposed settlement to the district court, which "may enter a stipulated judgment after scrutinizing the settlement for fairness." *Id*. at 1353. *See also Boone v. City of Suffolk, Va.*, 79 F. Supp.2d 603, 605 (E.D. Va. 1999) (FLSA overtime settlement must be overseen by the Department of Labor or approved for fairness and reasonableness by a district court.

The Parties request that this Court consider these individual settlements under the procedures and standards set forth in *Lynn's Food Stores*, 679 F.2d at 1350. The Court will find, after scrutinizing the settlements, that the agreements are fair and should be approved. The settlement agreements reflect reasonable compromises of issues actually in dispute, the settlements were reached in an adversarial context in which the Plaintiffs were represented by competent and experienced counsel, and the totality of the proposed settlements are fair and reasonable.

II.
PROCEDURAL HISTORY

Plaintiffs filed these lawsuits in the United States District Court for the Northern District of Alabama, Western Division on or around August 8, 2006, alleging that Defendant violated the FLSA. Defendant filed its Original Answer on or around September 5, 2006. These cases were transferred to this jurisdiction on or around January 14, 2009. These four Plaintiffs have now reached agreed settlements to their claims in these four three individual lawsuits with Defendant.

Plaintiffs claim that they worked for the Defendant and were misclassified as exempt employees. Plaintiffs alleged they regularly worked more than 40 hours in a workweek. As a result, they contend that they were denied overtime owed to them for hours worked in excess of 40 in any workweek. Defendant denies that Plaintiffs were misclassified. Defendant continues to deny any wrongdoing whatsoever and does not admit to any violation of law, statute, or regulation.

III.
THE COURT SHOULD APPROVE THE AGREEMENTS

This Court should approve these Agreements because the settlements are the products of robustly contested litigation, Plaintiffs are represented by competent and experienced counsel, and the settlement agreements reflect a reasonable compromises over disputed issues. The settlement provisions also are fair and reasonable.

An FLSA claim, except in two circumstances, cannot be waived or settled. *Brooklyn Sav. Bank v. O'Neil*, 324 U.S. 697, 706 (1945). The exceptions are (1) that the Secretary of Labor can supervise the payment of back wages, or (2) that the employer and employee present the proposed settlement to the district court for approval. 29 U.S.C. § 216(c); *Lynn's Food Stores, Inc. v. United States*, 679 F.2d 1350, 1354 (11th Cir. 1982). Both Plaintiffs and Defendant request this Court to approve the Parties' individual settlement agreements.

A district court, when reviewing a proposed settlement of an FLSA claim must "scrutiniz[e] the settlement for fairness" and decide whether the proposed settlement is a "fair and reasonable resolution of a *bona fide* dispute over FLSA provisions." *Id*. at 1353, 1355. *Lynn's Food Stores* essentially established four factors for a district court to examine to determine whether to approve a FLSA Settlement:

1. Was the settlement achieved in an adversarial context?
2. Was the Plaintiff represented by attorneys who can protect their rights?
3. Does the settlement reflect a reasonable compromise over issues that are actually in dispute?
4. Is the settlement fair?

Id. at 1353-54.

The Agreed Stipulation, attached as **Exhibit 1** hereto, reveals that the settlements were negotiated at arm's length by experienced counsel who protected the rights of the Parties. The settlements reflect reasonable compromises regarding *bona fide* disputes between the Parties regarding the questions of liability and the amount of alleged damages under the FLSA. Furthermore, the Parties have agreed in the Agreed Stipulation that the settlements are fair, just, and adequate to settle the claims of each individual Plaintiff.

Here, the settlements are fair and reasonable. Plaintiffs may get nothing if these cases were to proceed through trial. Even if Plaintiffs were to prevail at trial on the issue of liability, a process likely to consume several more months, their damages might not exceed the amount to which they have agreed to settle at this stage. Finally, the settlements are the product of arms-length bargaining conducted by experienced legal counsel. The Court should, in any event, take into account the risks inherent in litigation. "The fact that a proposed settlement may only amount to a fraction of the potential recovery does not indicate that the settlement is not fair and reasonable," after taking into account the risks and costs of litigation. *Quintanilla v. A&R Demolition Inc*., No. 04-cv-1965, 2008 U.S. Dist. LEXIS 37449 (S.D. Tex. May 7, 2008) (citing *City of Detroit v. Grinnell Corp*., 495 F.2d 448, 455 (2d Cir. 1974)).

The endorsement of the settlements by counsel for both Parties is a "factor that weighs in favor of approval." *Quintanilla*, 2008 U.S. Dist. LEXIS at *15. In reviewing the opinions of counsel, "a court should bear in mind that counsel for each side possess[es] the unique ability to assess the potential risks and rewards of litigation. *Id.* at *14 (citing *San Antonio Hispanic Police Officers' Org., Inc. v. City of San Antonio*, 188 F.R.D. 433, 461 (W.D. Tex. 1999)). In these cases, Plaintiffs' attorneys are fully aware of the factual contentions of their clients and are in the best position to opine as to whether these settlements produce fair results after consideration of risks.

In a series of cases involving Dollar General Store Managers in another jurisdiction, summary judgment was granted as to seven Plaintiffs, only to be subsequently vacated on appeal and then later denied. *See Allen v. Dolgencorp, Inc.*, 513 F. Supp. 2d 1215 (N.D. Ala. 2007) *rev'd and vacated by* 2008 U.S. App. LEXIS 11506 (11th Cir. Ala. May 23, 2008). Accordingly, none of the Parties could reasonably have any level of certainty as to the ultimate probability of success.

IV.
ADDITIONAL FACTORS TO CONSIDER IN ASSESSING REASONABLENESS OF SETTLEMENTS

Defendant asserts that its potential exposure in Plaintiffs' individual claims is minimal, if any. Defendant's position is based, among other things, on the fact that seven other federal courts have ruled that Dollar General Store Managers are exempt managerial employees whose primary duty is management, six of these cases being decided in 2010. *See Bledsoe v. Dolgencorp, Inc.*, C/A No. 3:99-3761-17 (D.S.C. October 4, 2000); *King v. Dolgencorp* (No. 3:09-cv-00146 (M.D. Pa. May 6, 2010)); *Johnson v. DG Retail* (No. 1:08-cv-123, 2010 U.S. Dist. LEXIS 47416 (D. Utah May 13, 2010)); *Noble v. Dolgencorp* (No. 5:09-cv-00049 (S.D. Miss. May 11, 2010)); *Hartman v. Dolgencorp of Texas, Inc.* (No. 6:09-cv-000009 (N.D. Tex. June 24, 2010)); *Mayne-Harrison v. Dolgencorp, Inc.* (No. 1:09-cv-42 (N.D. W.Va. September 17, 2010)); and *Roberts v. Dolgencorp, Inc.* (No. 2:09-cv-0005 (M.D. Tenn. November 18, 2010)). Attached as **Exhibits 2-8** are true and correct copies of these opinions for the Court's consideration in relation to this Motion.

The Parties have entered proposed individual confidential settlement agreements to avoid the necessity, expense, inconvenience and uncertainty of litigation. The Parties, with the Court's approval, would like to resolve and settle all claims and disputes between them arising out of, or in any way related to, Plaintiffs' claims under the Fair Labor Standards Act.

Following the Parties' extensive negotiations, each Plaintiff reached a confidential settlement agreement with Defendant. While not intending to waive the confidential nature of the settlement agreements, the Parties are willing to submit the exact amount of the settlements, or the settlement agreements themselves, for *in camera* inspection to enable the Court to assess the reasonableness of the settlements if requested to do so.

V.
CONCLUSION

The Parties believe that the settlements reached were fair and reasonable compromises of the respective positions of the Parties. The Parties therefore respectfully request the Court approve the individual settlements and enter the Proposed Order. Entry of the Proposed Order will "secure the just, speedy and inexpensive determination" of these actions in accordance with FED. R. CIV. P. 1.

Respectfully submitted this the 23rd day of December, 2010

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